

1960

c 408 Trustee Act

Ontario

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CHAPTER 408

The Trustee Act

1. In this Act,

Interpre-
tation

- (a) "assign" means the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, and "assignment" has a corresponding meaning;
- (b) "contingent right" as applied to land includes a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained, and also a right of entry whether immediate or future, vested or contingent;
- (c) "convey" applied to a person means the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, and "conveyance" has a corresponding meaning;
- (d) "devisee" includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;
- (e) "instrument" includes a deed, a will and a written document and an Act of the Legislature, but not a judgment or order of a court;
- (f) "land" includes messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable

of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

- (g) "mental incompetent" or "mentally incompetent person" means any person who has been declared a mentally incompetent person;
- (h) "mortgage" is applicable to every estate, interest or property, in land or personal estate, that is merely a security for money, and "mortgagee" has a corresponding meaning and includes every person deriving title under the original mortgagee;
- (i) "person of unsound mind" means any person, not an infant, who, not having been declared a mentally incompetent person, is incapable, from infirmity of mind, to manage his own affairs;
- (j) "personal estate" includes leasehold estates and other chattels real, and also money, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein;
- (k) "personal representative" means an executor, an administrator, and an administrator with the will annexed;
- (l) "possessed" is applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land;
- (m) "securities" includes stocks, funds and shares;
- (n) "seized" is applicable to any vested interest for life, or of a greater description, and extends to estates, legal and equitable, in possession, or in futurity, in any land;
- (o) "stock" includes fully paid-up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;
- (p) "transfer", in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee;

- (q) "trust" does not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, includes implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and extends to and includes the duties incident to the office of personal representative of a deceased person, and "trustee" has a corresponding meaning and includes a trustee however appointed and several joint trustees;
- (r) "will" includes a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants Act*,^{R.S.O. 1960, c. 187} and any other testamentary disposition. R.S.O. 1950, c. 400, s. 1.

RETIREMENT OF TRUSTEES

2.—(1) Where there are more than two trustees, if one of them by deed declares that he desires to be discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee who desires to be discharged shall be deemed to have retired from the trust, and is, by the deed, discharged therefrom under this Act without any new trustee being appointed in his place.

Retirement
of trustees

(2) This section does not apply to executors or administrators. R.S.O. 1950, c. 400, s. 2.

Application
of section

APPOINTMENT OF NEW TRUSTEES

3.—(1) Where a trustee dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or has been convicted of an indictable offence or is bankrupt or insolvent, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable.

Power of ap-
pointing new
trustees

Survivor-
ship

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or where there were two or more trustees, of the last surviving or continuing trustee, are or is capable of exercising or performing any power or trust that was given to or capable of being exercised by the sole or last surviving trustee. R.S.O. 1950, c. 400, s. 3.

Authority
of surviving
trustee to
appoint
successor
by will

4. Subject to the terms of any instrument creating a trust, the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust may appoint by will another person or other persons to be a trustee or trustees in the place of the sole or surviving or continuing trustee after his death. R.S.O. 1950, c. 400, s. 4.

Power of
court to
appoint new
trustees

5.—(1) The Supreme Court may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

Limitation
of effect
of order

(2) An order under this section and any consequential vesting order or conveyance does not operate as a discharge from liability for the acts or omissions of the former or continuing trustees. R.S.O. 1950, c. 400, s. 5.

What may
be done:

6. On the appointment of a new trustee for the whole or any part of trust property,

increase in
number

(a) the number of trustees may be increased; and

separate
trustees
for distinct
trusts

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

where not
less than
two to be
appointed

(c) it is not obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under section 3 from his trust unless there will be a trust company or at least two individuals as trustees to perform the trust; and

- (d) any assurance or thing requisite for vesting the trust ^{execution and performance of requisite deeds and acts} property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done. R.S.O. 1950, c. 400, s. 6.

7. Every new trustee so appointed, as well before as after ^{Powers of new trustee} all the trust property becomes by law or by assurance or otherwise vested in him, has the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust. R.S.O. 1950, c. 400, s. 7.

8. The provisions of this Act relative to the appointment ^{Application of Act} of new trustees apply to the case of a person nominated trustee in a will but dying before the testator. R.S.O. 1950, c. 400, s. 8.

VESTING INSTRUMENTS

9.—(1) Where an instrument, executed after the 1st day ^{Vesting of trust property in new or continuing trustees without conveyance} of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in him, or in them as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where such an instrument, by which a retiring trustee ^{On retirement of a trustee} is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to land conveyed by way ^{Application to mortgages, stocks, shares, etc.} of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner prescribed by or under an Act of the Parliament of Canada or of the Legislature.

(4) For the purpose of registration the person or persons ^{Interpretation for registration purposes} making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made

by him or them under a power conferred by this Act. R.S.O. 1950, c. 400, s. 9.

VESTING ORDERS, ORDERS RELEASING CONTINGENT RIGHTS, ETC.

Vesting
orders

10.—(1) In any of the following cases:

- (a) where the Supreme Court appoints or has appointed a new trustee; or
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Ontario, or cannot be found; or
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (e) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or
- (f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement,

the Supreme Court may make an order, vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of the contingent right to such person as the court may direct.

Vesting of
estate

(2) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the court may direct in the persons who, on the appointment, are the trustees.

Where
trustee out
of Ontario

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. R.S.O. 1950, c. 400, s. 10.

11. Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. R.S.O. 1950, c. 400, s. 11.

Orders as to
contingent
rights of
unborn
persons

12. Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. R.S.O. 1950, c. 400, s. 12.

Vesting
order in
place of
conveyance
by infant
mortgagee

13.—(1) In any of the following cases:

Vesting
orders as to
stock and
choses in
action

- (a) where the Supreme Court appoints, or has appointed, a new trustee; or
- (b) where a trustee entitled alone, or jointly with another person, to stock or to a chose in action,
 - (i) is an infant, or
 - (ii) is out of Ontario, or
 - (iii) cannot be found, or
 - (iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled, or
 - (v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action for fourteen days next after an order of the Supreme Court for that purpose has been served on him; or
- (c) where it is uncertain whether a trustee entitled alone, or jointly with another person, to stock or to a chose in action is alive or dead,

the Supreme Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the court may appoint.

Vesting in
new
trustee

(2) Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

Vesting
in person
having joint
interest

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone, or jointly with any other person whom the court may appoint.

Appoint-
ment of
person to
transfer

(4) Where a vesting order may be made under this section the court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

Transfer,
how to be
made

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act may transfer the stock to himself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section.

After notice
of order, no
transfer to
be made
contrary
thereto

(6) After notice in writing of an order under this section it is not lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

Court may
make
declaration

(7) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under this Act, is to be exercised.

Ships,
shares in

(8) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. R.S.O. 1950, c. 400, s. 13.

TRUSTEES FOR CHARITIES

Exercise of
powers in
favour of
charities, etc.

14. The Supreme Court may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the court would have jurisdiction upon action duly instituted. R.S.O. 1950, c. 400, s. 14.

Power to
order a sale
in proper
cases

15.—(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Supreme Court may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper.

Notice to
Public
Trustee

(2) No such order shall be made unless notice of the application has been given to the Public Trustee. R.S.O. 1950, c. 400, s. 15.

WHO MAY APPLY

16.—(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

Who may apply for appointment of new trustee, or vesting order, etc.

(2) An order concerning any land or personal estate, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by the mortgage. R.S.O. 1950, c. 400, s. 16.

In case of mortgaged property

CERTAIN POWERS AND RIGHTS OF TRUSTEES

Purchase and Sale

17. Subject to *The Devolution of Estates Act* where a trust for sale or a power of sale of land or personal estate is vested in a trustee he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss. R.S.O. 1950, c. 400, s. 17.

Power and discretion of trustee for sale
R.S.O. 1960, c. 106

18.—(1) A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Sales by trustees not impeachable on certain grounds

(2) Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made. R.S.O. 1950, c. 400, s. 18.

Collusion between purchaser and trustee

Dedication or Sale for Highway Purposes

19. With the approval of the Ontario Municipal Board or of a judge of the Supreme Court, a person who holds land or a charge or claim against it or has control of the legal title, upon any trust or for a specified or particular purpose, may,

Dedication or sale of land by trustee for municipal highway

to the extent of his estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose; provided that the approval is not necessary if such dedication or sale is otherwise within such person's powers. R.S.O. 1950, c. 400, s. 19.

Agents

Power to
authorize
receipt of
money by
solicitor

20.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

By banker

(2) A trustee may appoint a manager or a branch manager of a chartered bank or a solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

Appoint-
ment not a
breach of
trust

(3) A trustee shall not be charged with a breach of trust by reason only of his having made or concurred in making any such appointment.

Liability of
trustee, in
certain
cases, not
affected

(4) Nothing in this section exempts a trustee from any liability that he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee. R.S.O. 1950, c. 400, s. 20.

Insurance

Power to
insure
buildings

21.—(1) A trustee may insure against loss or damage by fire, tempest or other casualty, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

Application

(2) This section does not apply to any building or property that a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. R.S.O. 1950, c. 400, s. 21.

Renewals of Leases

22.—(1) A trustee of any leaseholds for lives or years that are renewable from time to time may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section does not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

Power of trustees of renewable leaseholds to renew

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power is bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. R.S.O. 1950, c. 400, s. 22.

to raise money for the purpose

Passing of Accounts

23.—(1) A trustee desiring to pass the accounts of his dealings with the trust estate may file his accounts in the office of the surrogate court of a county or district in which he or a co-trustee is resident or in which any part of the trust estate is situate, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the surrogate court; but in the case of trustees under a will the accounts shall be filed and passed in the office of the surrogate court by which probate of the will was granted.

When trustee may file accounts

(2) Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge of the surrogate court upon the passing of the accounts of the trustee has power to fix the amount of compensation payable to the trustee and the trustee is there-

Fixing compensation of trustee

upon entitled to retain out of any moneys in his hands the amount so determined. R.S.O. 1950, c. 400, s. 23.

Receipts

Receipts of
trustees to
be effectual
discharges

24. The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof. R.S.O. 1950, c. 400, s. 24.

Surviving Trustee

Powers of
two or more
trustees

25. Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. R.S.O. 1950, c. 400, s. 25.

INVESTMENTS

Authorized
investments

26. A trustee may invest any trust money in his hands in the classes of securities mentioned in this section, but only if the investment is in other respects reasonable and proper,

government
and municipal
securities

(a) bonds, debentures or other evidences of indebtedness,

(i) of or guaranteed by the Government of Canada,

(ii) of or guaranteed by the government of any province of Canada,

(iii) of or guaranteed by the Government of the United Kingdom,

(iv) of any municipal corporation in Canada, including debentures issued for public, separate, high or vocational school purposes, or guaranteed by any municipal corporation in Ontario, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectible by or through the municipality in which such property is situated;

mortgages
on real
estate

(b) first mortgages, charges or hypothecs upon real estate in Canada;

- (c) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity; Dominion subsidy bonds
- (d) debentures of any loan corporation that is registered under *The Loan and Trust Corporations Act*; loan company debentures R.S.O. 1960, c. 222
- (e) guaranteed investment certificates of any trust company that is registered under *The Loan and Trust Corporations Act*. 1952, c. 109, s. 1, *part*. trust company guaranteed investments

27.—(1) In addition to the investments authorized by section 26, the Supreme Court may, if it thinks fit, by order authorize a trustee holding trust money for investment to invest such moneys in the following classes of investments, but only if the investment is in other respects reasonable and proper and is made in accordance with subsections 2, 3 and 4, Other investments authorized by S.C.O.

- (a) bonds, debentures, debenture stock or other securities of any corporation incorporated by Canada, or by any province of Canada, or by any former province now forming part of Canada, that are secured by a mortgage or hypothec to a trust company either singly or jointly with another trustee upon improved real estate of such corporation or other assets of such corporation of the classes mentioned in this section or in section 26; bonds secured by trust deed
- (b) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that are payable, by virtue of an Act of a province of Canada, by or under the authority of the province, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity; provincial subsidy bonds
- (c) bonds, debentures or other evidences of indebtedness of a corporation that has paid, corporation securities
- (i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or

- (ii) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

preferred
shares

- (d) preferred shares of a corporation that has paid,
 - (i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
 - (ii) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

common
shares

- (e) fully paid common shares of a corporation that, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid.

Limitation

(2) No investment shall be made under this section that, at the time of making such investment, would cause the aggregate market value of the investments made under this section to exceed 35 per cent of the market value at that time of the whole trust estate, and, if in any estate or trust the trustee has retained, under the authority of the trust instrument, investments that had been acquired by the testator or settlor and that come within any of the classes authorized by this section, such investments shall be deemed to have been made under this section.

Change in
market
values

(3) No sale or other liquidation of any investment made under this section shall be required solely because of any change in the ratio between the market value of such investments and the market value of the whole trust estate.

Market
values

(4) In determining market values for the purpose of this section, a trustee may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as in his judgment seem fair and reasonable according to available information. 1960, c. 126, s. 1.

28. A trustee may, pending the investment of any trust money, deposit it during such time as is reasonable in the circumstances in any chartered bank of Canada, or in the Province of Ontario Savings Office, or in any trust company or loan corporation that is registered under *The Loan and Trust Corporations Act*. 1952, c. 109, s. 1, *part*. Power to deposit trust money R.S.O. 1960, c. 222

29. A trustee may from time to time vary or transpose any securities in which money in his hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of any nature authorized by this Act. R.S.O. 1950, c. 400, s. 28. Power to vary or transpose securities

30. A trustee lending money upon the security of any property upon which he may lawfully lend is not chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, whether such valuator carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed 60 per cent of the value of the property as stated in the report and that it was made under the advice of the valuator expressed in the report. R.S.O. 1950, c. 400, s. 29. When trustee not chargeable for lending on insufficient security

31. Where a trustee has improperly advanced money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced the security shall be deemed an authorized investment for such less sum, and the trustee is only liable to make good the sum advanced in excess thereof with interest. R.S.O. 1950, c. 400, s. 30. Trustee lending more than authorized amount

32. A trustee is not chargeable with breach of trust by reason only of his continuing to hold an investment that has ceased to be an investment authorized by the instrument of trust or by the general law. R.S.O. 1950, c. 400, s. 31. Liability in case of change of character of investment

PROTECTION AND INDEMNITY

33. A trustee is chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and is answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, Extent of liability of trustees

broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of his trust or powers. R.S.O. 1950, c. 400, s. 32.

Trustees committing breach of trust at instigation of beneficiary

34.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Application to separate estate of married women

(2) This section applies notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation. R.S.O. 1950, c. 400, s. 33.

TECHNICAL BREACHES OF TRUST

Relief of trustees committing technical breach of trust

35. If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed the breach, the court may relieve the trustee either wholly or partly from personal liability for the same. R.S.O. 1950, c. 400, s. 34.

PAYMENT INTO COURT

Payment into court by trustees of trust funds or securities by order of court

36.—(1) Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees and it is the desire of the trustee, or of the majority of the trustees, to pay the money into court, the Supreme Court may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if the concurrence cannot be obtained.

Payment or delivery to Accountant of court

(2) Where any such money is deposited with a banker or broker or other depository the court may order payment thereof to the Accountant of the Supreme Court, and payment made in pursuance of such order is valid and takes effect as if it had been made on the authority or by the act of all the persons entitled to the money paid.

(3) Where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money, any person with whom trust money has been deposited or to whose hands trust money has come may make an application similar to that authorized by subsection 1.

Payment into court by persons holding trust moneys for trustee

(4) Where, on the passing of the final accounts of a personal representative, guardian or trustee by the judge of a surrogate court, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to an infant or to a mentally incompetent person or person of unsound mind, or to a person whose address is unknown, it is the duty of such personal representative, guardian or trustee to pay the money into the Supreme Court to the credit of the person who is entitled to it.

Money found to be due infant, etc., on final passing of accounts in surrogate court to be paid into court

(5) A certified copy of the order or report of the judge shall be left with the Accountant when the money is paid in, and the person paying it in is entitled to deduct \$5 for his costs.

Accountant to be furnished with copy of order, etc.

(6) Where an infant, mentally incompetent person or person of unsound mind is entitled to any money, the person by whom such money is payable may pay it into the Supreme Court to the credit of such infant, mentally incompetent person or person of unsound mind and this is a sufficient discharge for the money so paid into court.

Moneys to which infant or mentally incompetent person entitled

(7) Where a trustee desires to be relieved from his trust the court may order all securities held for the trust to be transferred to the Public Trustee.

Transfer of trust

(8) Money paid into court is subject to the order of the court.

Disposition

(9) Where, however, the person to whom money is due, as mentioned in subsections 4 and 6, is a patient in a hospital for mentally ill, mentally defective or epileptic persons and the Public Trustee is committee of his estate, the money due shall be paid over to the Public Trustee. R.S.O. 1950, c. 400, s. 35.

Patient in mental hospital

PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST

Removal of Personal Representatives

37.—(1) The Supreme Court may remove a personal representative upon any ground upon which the court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

Power of court to remove

Security by
person
appointed

R.S.O. 1960,
c. 388

(2) Every person so appointed shall, unless the court otherwise orders, give such security as he would be required to give if letters of administration were granted to him under *The Surrogate Courts Act*.

Who may
apply

(3) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased.

Procedure

(4) Subject to any Rules of court, the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the Supreme Court under this section.

When new
appointment
unnecessary

(5) Where the executor or administrator removed is not a sole executor or administrator the court need not, unless it sees fit, appoint any person to act in the place of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed passes to the remaining executor or administrator as if the person so removed had died.

Chain of
representa-
tion

(6) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

Copy of
order to be
filed with
Registrar

(7) A certified copy of the order of removal shall be filed with the Registrar of the Supreme Court, and another copy with the registrar of the surrogate court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where the grant is indexed.

Endorse-
ment

(8) The date of the grant shall be endorsed on the copy of the order filed with the Registrar of the Supreme Court.

Jurisdiction
of surrogate
court

(9) Where the estate is less than \$1,000, the jurisdiction conferred by this section may be exercised by the surrogate court. R.S.O. 1950, c. 400, s. 36.

RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES

Actions by
executors
and
adminis-
trators for
torts

38.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form

part of the personal estate of the deceased; provided that if death results from such injuries no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso is not in derogation of any rights conferred by *The Fatal Accidents Act.* R.S.O. 1960, c. 138

(2) Except in cases of libel and slander, if a deceased person committed a wrong to another in respect of his person or property, the person wronged may maintain an action against the executor or administrator of the person who committed the wrong. Actions against executors and administrators for torts R.S.O. 1950, c. 400, s. 37 (1, 2).

(3) Where a person wronged is unable to maintain an action under subsection 2 because neither letters probate of the will of the deceased person nor letters of administration of the deceased person's estate have been granted within six months after the death, a judge of the Supreme Court may, on the application of the person wronged and on such notice as he may deem proper, appoint an administrator *ad litem* of the estate of the deceased person, whereupon,

- (a) the administrator *ad litem* shall be deemed to be an administrator against whom an action may be brought under subsection 2; and
- (b) any judgment in favour of or against the administrator *ad litem* in any such action has the same effect as a judgment in favour of or against, as the case may be, the deceased person, but it has no effect whatsoever for or against the administrator *ad litem* in his personal capacity. 1951, c. 88, s. 1 (1); 1956, c. 91, s. 1.

(4) An action under this section shall not be brought after the expiration of one year from the death of the deceased. Limitation of actions R.S.O. 1950, c. 400, s. 37 (3).

39. A personal representative has an action of account as the testator or intestate might have had if he had lived. Action of account R.S.O. 1950, c. 400, s. 38.

40. An administrator with the will annexed or an executor to whom probate is granted has all the power conferred by the testator upon the executor named in his will and may in all respects act as effectually as though he alone had been named by the testator as his sole executor. Powers of executor to whom probate granted R.S.O. 1950, c. 400, s. 39.

Execution of Powers

41. Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, encumber or lease any land, and no person is by the will or otherwise by the testator Who may execute direction to sell, etc., where no other person is appointed

appointed to execute and carry the same into effect the executor, if any, named in the will may execute and carry into effect every such direction in respect of such land and any estate or interest therein in the same manner and with the same effect as if he had been appointed by the testator for that purpose. R.S.O. 1950, c. 400, s. 40.

Idem

42. Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for his dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, encumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if he had been appointed by the testator for that purpose. R.S.O. 1950, c. 400, s. 41.

Land Contracts of Deceased

Conveyance
by personal
representa-
tive in pur-
suance of a
contract by
deceased

43. Where a person has entered into a contract in writing for the sale and conveyance of land and has died intestate or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, and where the deceased would be bound, were he alive, to execute a conveyance, his personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor, and the conveyance is as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but does not have any further validity or effect. R.S.O. 1950, c. 400, s. 42.

Devises in Trust

Power to
raise money
by sale or
mortgage
to satisfy
charges

44.—(1) Where by any will coming into operation after the 18th day of September, 1865, a testator charges his land, or any specific part thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to his executors or to a trustee without any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

(2) Purchasers or mortgagees are not bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof. R.S.O. 1950, c. 400, s. 43.

Purchaser's
position

45. Every personal representative, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, is subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done by him under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. R.S.O. 1950, c. 400, s. 44.

Duties and
liabilities of
an executor
and adminis-
trator acting
under the
powers in
this Act

46.—(1) Where there are several personal representatives and one or more of them dies, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will.

Survivor-
ship

(2) Until the appointment of new personal representatives, the personal representatives or representative for the time being of a sole personal representative, or, where there were two or more personal representatives, of the last surviving or continuing personal representative, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by the sole or last surviving personal representative. R.S.O. 1950, c. 400, s. 45.

EFFECT OF REVOCATION OF AN ERRONEOUS GRANT

47.—(1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, notwithstanding that the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of the probate or appointment, including all payments made in good faith to or by the personal representative, are as valid and effectual as if the same had been rightly granted or made; but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to subsections 2 and 3, recover from the person who acted under the revoked grant or appointment any part of the estate remaining in his hands undistributed and, subject to *The Limitations Act*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a husband or wife of the decedent or supposed decedent, the part so received or the value thereof.

Validity
of acts done
prior to
revocation of
erroneous
grant

R.S.O. 1960,
c. 214

Expenses (2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining in his hands undistributed his proper costs and expenses incurred in the administration.

Fraud (3) Nothing in this section protects any person acting as personal representative where he has been party or privy to any fraud whereby the grant or appointment has been obtained, or after he has become aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, he acts in pursuance of a contract for valuable consideration and otherwise binding made before he became aware of such fact. R.S.O. 1950, c. 400, s. 46.

ADMINISTRATION OF ESTATES

Power, to pay debts 48.—(1) A personal representative may pay or allow any debt or claim on any evidence that he thinks sufficient.

to compound, etc. (2) A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing done by him or them in good faith. R.S.O. 1950, c. 400, s. 47.

In case of deficiency of assets, debts to rank *pari passu*

49.—(1) On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein prejudices any lien existing during the lifetime of the debtor on any of his property.

Overpayment to creditor

(2) Where a personal representative pays more to a creditor or claimant than the amount to which he is entitled under

subsection 1, the overpayment does not entitle any other creditor or claimant to recover more than the amount to which he would be entitled if the overpayment had not been made.

(3) Where a personal representative pays more to a creditor or claimant than the amount to which he is entitled under subsection 1, the court may relieve the personal representative either wholly or partly from personal liability if it is satisfied that he has acted honestly and reasonably and for the protection or conservation of the assets of the estate. R.S.O. 1950, c. 400, s. 48.

Relief from
personal
liability

50.—(1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate, has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under the lease or agreement for lease.

As to liability
of executor
or adminis-
trator in
respect of
covenants,
etc., in
leases

(2) The personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the lease or agreement for lease.

No personal
liability for
subsequent
claim

(3) Nothing in this section prejudices the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom they have been distributed. R.S.O. 1950, c. 400, s. 49.

Right to
follow assets
not affected

51.—(1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance by him hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum coven-

As to liability
of personal
representa-
tive in
respect of
rents, etc., in
conveyances
on rent-
charge, etc.

anted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the persons entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any further liability under the conveyance or agreement for conveyance.

No personal liability for any subsequent claim

(2) A personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

Right of grantor, etc., to follow assets not affected

(3) Nothing in this section prejudices the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom they have been distributed. R.S.O. 1950, c. 400, s. 50.

Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate

52.—(1) Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative has given such or the like notices as, in the opinion of the court in which such trustee, assignee, or personal representative is sought to be charged, would have been directed to be given by the Supreme Court in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee, or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, he may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof among the persons entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim he had not notice at the time of the distribution.

Right of creditor to follow assets not affected

(2) Nothing in this section prejudices the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same.

Subs. 1 not to apply to heirs, etc.

(3) Subsection 1 does not apply to heirs, next of kin, devisees or legatees claiming as such. R.S.O. 1950, c. 400, s. 51.

53. Property over which a deceased person had a general power of appointment, which he might have exercised for his own benefit without the assent of any other person, shall be assets for the payment of his debts where the same is appointed by his will, and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. R.S.O. 1950, c. 400, s. 52.

Exercise of
general
power by
will,
effect of

54.—(1) When a person dies having by will appointed an executor, the executor, in respect of any residue not expressly disposed of, shall be deemed to be a trustee for the person, if any, who would be entitled to the estate under *The Devolution of Estates Act* in case of an intestacy, unless it appears by the will that the executor was intended to take the residue beneficially.

Undisposed
of residue

R.S.O. 1960,
c. 106

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Act had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under *The Devolution of Estates Act* in case of an intestacy. R.S.O. 1950, c. 400, s. 53.

Where there
is no person
entitled to
the residue

55. Executors of executors have the same actions for the debts and property of the first testator as he would have had if in life, and are answerable for such of the debts and property of the first testator as they recover as the first executors would be if they had recovered the same. R.S.O. 1950, c. 400, s. 54.

Rights and
liabilities of
executors of
executors

56. The personal representative of any person who, as executor or as executor in his own wrong, or as administrator, wastes or converts to his own use any part of the estate of any deceased person is liable and chargeable in the same manner as his testator or intestate would have been if he had been living. R.S.O. 1950, c. 400, s. 55.

Liability of
personal
representa-
tive of
one who
commits
waste

57.—(1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor holding security on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, shall place a value on such security and the creditor shall rank upon the distribution of assets only upon the unsecured portion of his claim after deducting the value of the security, unless the personal representative elects to take over the security as hereinafter provided.

Deficiency
of assets

Where personal representative requires creditor to prove claim

(2) Where the personal representative of a deceased person is of the opinion that there may be a deficiency of assets, he may require any creditor to prove his claim and to state whether he holds any security for his claim or any part thereof, and to give full particulars of the same and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, to place a specified value on such security and the personal representative may either consent to the creditor ranking for the amount of his claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of 10 per cent upon the specified value to be paid out of the estate as soon as the personal representative has realized upon such security or is in a position to make payment out of the assets of the estate and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor, shall be the amount for which he ranks upon the estate of the deceased debtor.

Inspectors, directing of; remuneration of

(3) Where inspectors have been appointed as hereinafter provided or where the estate is being administered under the direction of or by a court, the personal representative in making his election shall act under the direction of the inspectors or of the court, as the case may be, and the remuneration of the inspectors shall be determined by the surrogate court judge on the passing of accounts.

Where claim based on negotiable instruments

(4) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable and which is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as his security for the payment thereof, but after the maturity of such liability and its non-payment he is entitled to amend and revalue his claim. R.S.O. 1950, c. 400, s. 56.

When creditor holding security fails to value same

58.—(1) Where a creditor fails to value any security held by him which under this Act he is called upon to value, the personal representative may apply in a summary way to the judge of the surrogate court from which probate or letters of administration were issued for an order that unless a specified value is placed on such security and notified in writing to the personal representative, within a time to be limited by the order, such claimant, in respect of the claim or the part thereof for which security is held, is wholly barred of any right to share in the proceeds of the estate unless the judge

upon the application of the creditor extends the time for the valuation of the security.

(2) Where an estate is being administered by or under the direction of a court, such court shall exercise the jurisdiction conferred by this section upon the judge of the surrogate court. R.S.O. 1950, c. 400, s. 57.

Administration under direction of a court

59.—(1) Where in the administration of the estate of a deceased person the personal representative fears that there may be a deficiency of assets or that all the creditors will not be paid in full, the personal representative may call a meeting of creditors and lay before them the situation of the estate and at such meeting inspectors may be appointed by the creditors to assist the personal representative in the administration of the estate and to advise him with respect thereto.

Calling meeting of creditors where there is a deficiency of assets

(2) In any such case the personal representative shall call a meeting of creditors for the purpose aforesaid at the request in writing of creditors holding 10 per cent of the amount of claims filed against the estate.

Creditors' request for meeting

(3) In cases where no meeting of creditors has been held the personal representative may appoint a creditor or creditors as inspector or inspectors to assist him in the realizing and management of the estate but in such case the appointment shall be approved by the surrogate judge before the inspectors accept office. R.S.O. 1950, c. 400, s. 58.

Appointment of creditor as an inspector

APPLICATIONS TO COURT FOR ADVICE

60.—(1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Supreme Court for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property or the assets of his ward or his testator or intestate.

Trustee, etc., may apply for advice in management of trust property

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian or personal representative, in the subject matter of the application, unless he has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. R.S.O. 1950, c. 400, s. 59.

Indemnity of trustee, etc., acting as advised

ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES

61.—(1) A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for his care,

Allowance to trustees, etc.

pains and trouble, and his time expended in and about the estate, as may be allowed by a judge of the Supreme Court or by any master or referee to whom the matter may be referred.

Though estate not before the court

(2) The amount of such compensation may be settled although the estate is not before the court in an action.

Allowance to personal representative for services

(3) The judge of a surrogate court, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the estate.

Allowance to barrister or solicitor trustee for professional services

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services.

Where allowance fixed by the instrument

(5) Nothing in this section applies where the allowance is fixed by the instrument creating the trust. R.S.O. 1950, c. 400, s. 60.

MISCELLANEOUS

Trustees buying or selling

R.S.O. 1960, c. 414

62. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of *The Vendors and Purchasers Act*. R.S.O. 1950, c. 400, s. 61.

Indemnity

63. This Act or an order purporting to be made under it is a complete indemnity to all persons for any acts done under the Act or order, as the case may be. R.S.O. 1950, c. 400, s. 62, *redrafted*.

Costs may be ordered to be paid out of estate

64. The Supreme Court may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act, or any part thereof, to be paid or raised out of the property in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the court may deem proper. R.S.O. 1950, c. 400, s. 63.

Application of Act

65. Subject to section 66, unless otherwise expressed therein, this Act applies to all trusts whenever created and to all trustees whenever appointed. R.S.O. 1950, c. 400, s. 64.

Additional powers

66. The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument

creating the trust, and have effect subject to the terms thereof.
R.S.O. 1950, c. 400, s. 65.

67. Nothing in this Act authorizes a trustee to do any-^{Express}
thing that he is in express terms forbidden to do, or to omit^{terms of}
to do anything that he is in express terms directed to do by the^{trust}
instrument creating the trust. R.S.O. 1950, c. 400, s. 66.^{instrument}
^{to prevail}

